ATTORNEY FOR APPELLANT:

PAUL D. STANKO
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RYAN D. JOHANNINGSMEIER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

AARON J. WARREN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0602-CR-105
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Richard J. Conroy, Judge
Cause No. 45G03-9509-CF-199

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Aaron J. Warren belatedly appeals his sentence imposed following his plea of guilty to voluntary manslaughter as a class A felony and aggravated battery as a class B felony.

We affirm.

ISSUE

Whether the trial court abused its discretion in sentencing Warren.

FACTS

According to the stipulated factual basis of the guilty plea, on September 22, 1995, Warren, who was armed with a rifle, went into the house of his former girlfriend, Laniece Thomas, and found Thomas with Tommy Lee Crawford, who was "only partially dressed." (App. 34.) Warren "became enraged" upon seeing Thomas with another man, and "while acting under sudden heat[,]" shot Crawford with the rifle and killed him. *Id.* Warren then shot Thomas, injuring her and causing her a "substantial risk of death." *Id.*

On September 25, 1995, the State charged Warren with Count 1, murder; Count 2, attempted murder as a class A felony; Count 3, aggravated battery as a class B felony; and Count 4, confinement as a class B felony. In August 1996, Warren and the State entered into a written plea agreement, and Warren pleaded guilty to an amended Count 1, voluntary manslaughter as a class A felony, and Count 3, aggravated battery as a class B felony in exchange for the State's amendment of Count 1 and dismissal of the two other charges.

At Warren's sentencing hearing, the trial court found the following aggravating circumstances: (1) Warren's criminal history and (2) the "serious emotional damage" to Thomas and to Crawford's family.[1] (Tr. at 47.) The trial court found that Warren's guilty plea and his lack of felony convictions were mitigating circumstances. After finding that "the aggravating circumstances outweigh the mitigating circumstances[,]" the trial court sentenced Warren to thirty-three years on his class A felony conviction and twelve years on his class B felony conviction and ordered these sentences be served consecutively.[2] *Id.* at 48. Thus, the trial court ordered that Warren serve an aggregate term of forty-five years in the Indiana Department of Correction.

DECISION

The sole issue is whether the trial court abused its discretion in sentencing Warren. Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and

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[1] The State contends that the trial court also found Warren's "need for correctional or rehabilitative treatment" to be an additional aggravator. (Appellee's Br. at 5). During the sentencing hearing, the trial court discussed Warren's criminal history and noted that Warren had been convicted of criminal trespass and was then discharged unsatisfactorily from probation on that conviction. The trial court then stated that Warren "may be in need of correctional treatment, because that prior attempt at rehabilitation was not successful." (Tr. at 46.) The trial court, however, did not list the need for correctional treatment as a separate aggravator in its written sentencing order. Given the trial court's reference to a possible need for correctional treatment when discussing Warren's criminal history, we cannot agree that the trial court found this as a separate aggravator.

[2] At the time of sentencing, the presumptive sentence for a class A felony was thirty years with the possibility of twenty years being added for aggravating circumstances and ten years being subtracted for mitigating circumstances. *See* Ind. Code § 35-50-2-4. The presumptive sentence for a class B felony was ten years with the possibility of ten years being added for aggravating circumstances and four years being subtracted for mitigating circumstances. *See* I.C. § 35-50-2-5. Our legislature has since amended the sentencing statutes to provide for "advisory" rather than "presumptive" sentences.

effect of the facts and circumstances." *Pierce v. State*, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced or consecutive sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. *Veal v. State*, 784 N.E.2d 490, 494 (Ind. 2003). A trial court is not obligated to weigh a mitigating factor as heavily as the defendant requests. *Smallwood*, 773 N.E.2d at 263. A single aggravating factor may support the imposition of both an enhanced and consecutive sentence. *Payton v. State*, 818 N.E.2d 493, 496 (Ind. Ct. App. 2004), *trans. denied*.

Warren argues that the trial court abused its discretion by enhancing his class A felony sentence by three years and enhancing his class B felony sentence by two years and then ordering them to be served consecutively. Specifically, Warren argues that the trial court failed to assign his guilty plea significant mitigating weight and improperly used victim impact as an aggravator. We will address each argument in turn.[3]

A. Mitigator

Warren acknowledges that the trial court found his guilty plea to be a mitigating circumstance but argues that it "seems to have been given little to no weight" and

[3] Warren also argues that the trial court erred by failing to indicate in its sentencing order that it weighed the aggravators against the mitigators. It is true that the trial court's written sentencing order does not explicitly state that the aggravators outweigh the mitigators; however, during the sentencing hearing, the trial court stated, "The court would find that the aggravating circumstances outweigh the mitigating circumstances." (Tr. at 48.) Thus, we conclude that Warren's argument is without merit. *See Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002) ("In reviewing a sentencing decision in a non-capital case, we are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings.").

suggests that it should have been given significant weight. (Appellant's Br. at 7.) We disagree.

The finding of mitigating factors rests within the discretion of the trial court, and the trial court is not required to give the same weight to proffered mitigating factors as the defendant does. *Gross v. State*, 769 N.E.2d 1136, 1140 (Ind. 2002). Moreover, a guilty plea is not automatically a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). Here, Warren reaped a substantial benefit by pleading guilty because the State dismissed two charges—a class A felony and a class B felony—and reduced the murder charge to a voluntary manslaughter charge. In addition, Warren pleaded guilty approximately one year after he was charged. Under these circumstances, the trial court did not err by not giving Warren's guilty plea significant mitigating weight. *See, e.g.*, *Sensback*, 720 N.E.2d at 1164-1165 (holding that the defendant had "received benefits for her plea adequate to permit the trial court to conclude that her plea did not constitute a significant mitigating factor"); *Field v. State*, 843 N.E.2d 1008, 1012 (Ind. Ct. App. 2006) (holding that the trial court properly considered the defendant's guilty plea to be a minimally mitigating factor where the defendant had pleaded guilty in exchange for the dismissal of other charges), *trans. denied*.

B. Aggravator

Warren argues that the trial court improperly relied on victim impact as an aggravating factor. At Warren's sentencing hearing, Thomas testified that Warren, who was armed with a rifle, came into her house in the early morning, shot and killed Crawford, shot her in the right shoulder, and took her out of her house at gunpoint.

Thomas further testified that she had a scar on her right shoulder from where Warren shot her, that her whole right arm was still numb, and that she had some shortness of breath. Crawford's mother also testified and stated that she thought and cried about Crawford daily and that Crawford used to help take care of his grandmother. The trial court found the "serious emotional damage" to Crawford's family and to Thomas was an aggravating circumstance. (Tr. at 47.)

"[U]nder normal circumstances the impact upon family is not an aggravating circumstance for purposes of sentencing." *Bacher v. State*, 686 N.E.2d 791, 801 (Ind. 1997). The Indiana Supreme Court explained that because an impact on family members accompanies almost every case dealing with the death of a victim, such impact is already taken into account in the presumptive sentence and should not be considered as an aggravating circumstance. *Id.* However, the impact on others may qualify as an aggravator in certain cases. In such cases, the defendant's actions must have had an impact on other persons of a destructive nature that is not normally associated with the commission of the offense in question and this impact must be foreseeable to the defendant. *Id.* (citations, ellipses, and internal quotations omitted).

Here, the trial court did not articulate how the impact on Crawford's family was of the type so distinct that it rose to the level of an aggravating factor. Thus, the trial court's consideration of the impact to Crawford's family was improper. *See, e.g.*, *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002) (holding that the trial court improperly considered the impact on the victim's family as an aggravator). However, the testimony that Thomas

provided could be considered as part of the nature and circumstances of the crime, and thus, would be a proper aggravating circumstance to be considered by the trial court. *See McCann v. State*, 749 N.E.2d 1116, 1119 (Ind. 2001) (holding that the serious nature of a victim's injuries is also a proper aggravator); *Settles v. State*, 791 N.E.2d 812, 815 (Ind. Ct. App. 2003) (holding that the nature and circumstances of the crime as evidenced by the victim's injuries was a proper aggravator).

Even if the sentencing court in this case improperly used victim impact as an aggravating circumstance, the sentencing court did find at least one valid aggravating factor. A single aggravating circumstance is adequate to justify a sentence enhancement. *Bacher v. State*, 722 N.E.2d 799, 803 (Ind. 2000). When a sentencing court improperly applies an aggravating circumstance, but other valid aggravating circumstances do exist, a sentence enhancement may still be upheld. *Id.* "Where a trial court has used an erroneous aggravator, . . . the court on appeal can nevertheless affirm the sentence if it can say with confidence that the same sentence is appropriate without it." *Witmer v. State*, 800 N.E.2d 571, 572-573 (Ind. 2003).

Here, the remaining aggravating circumstance is Warren's criminal history. The Indiana Supreme Court has recently advised that merely because a defendant's criminal history alone may support an enhanced sentence does not mean that "sentencing judges or appellate judges can stop thinking about the appropriate weight to give a history of prior convictions." *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006); *see also Morgan v. State*, 829 N.E.2d 12, 15 (Ind. 2005). The significance of a defendant's criminal

history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense. *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999), *reh'g denied*.

During the sentencing hearing, the trial court found that "in aggravation [Warren] does have some history of criminal activity, but it's not great." (Tr. 46.) The trial court specifically noted that Warren had a conviction for criminal trespass, was placed on probation, and discharged unsatisfactorily from probation.[4] When referring to Warren's criminal history, the trial court also noted that Warren had arrests for criminal trespass, contributing to the delinquency of a minor, and illegal possession of alcohol by a minor.[5] When the trial court sentenced Warren, it stated that Warren's "arrests together with that one conviction would reflect adversely upon his character" and that his criminal history was "not a substantial aggravating circumstance[.]" (Tr. 47.)

At first glance, Warren's criminal trespass conviction, which occurred in 1992, does not appear to be related in nature or weight to his current offenses of voluntary manslaughter and aggravated battery. However, the record on appeal reveals that Warren went into Thomas's house in the early morning hours while she was sleeping on the floor with Crawford. When Thomas awoke, she saw Warren standing over her with a rifle. Thereafter, Warren shot Crawford and Thomas. While Warren was not charged or convicted of criminal trespass, it certainly appears that Warren went into his ex-girlfriend's house without her consent. Thus, the nature of Warren's prior offense is arguably related to the circumstances surrounding his current offenses.

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[4] Warren was convicted of criminal trespass in 1992.

[5] All of Warren's arrests occurred subsequent to his criminal trespass conviction.

The trial court concluded that Warren's criminal history was not a substantial aggravator. However, the trial court did not substantially enhance Warren's sentences. The trial court enhanced Warren's class A felony sentence by three years out of a potential twenty years and enhanced his class B felony sentence by two years out of a potential ten years. Although Warren had only one conviction for criminal trespass, he also had a failed attempt at probation and various arrests, including one for criminal trespass. In addition, the presentence investigation report ("PSI") reveals that Warren, who was twenty-three years old at the time of sentencing, had been a member of a street gang from age fourteen until age twenty-two and that he regularly smoked marijuana from age sixteen up until he was arrested for the current crimes. Thus, Warren had not lived a law-abiding life. Although Warren's criminal history aggravator would certainly not support a maximum enhanced sentence, we conclude that it would support the three-year enhancement of his class A felony sentence and the two-year enhancement of his class B felony sentence. *See, e.g., Stewart v. State*, 840 N.E.2d 859, 865 (Ind. Ct. App. 2006) (affirming the trial court's five-year enhancement of the defendant's murder sentence and ten-year enhancement of his attempted murder sentence after holding that the defendant's criminal history, which consisted of mostly misdemeanors, was sufficient to support an "enhanced, though not maximum, sentence"), *trans. denied*; *Williams v. State*, 830 N.E.2d 107, 114 (holding that although the defendant's two prior misdemeanors for public intoxication and violation of a protective order would not support a maximum enhanced sentence, they would support the three-year enhancement of his murder sentence), *trans. denied*. Because the same sentence is appropriate even

without the victim impact aggravator, we affirm the trial court's minimal enhancement of Warren's sentences.

C. Consecutive Sentencing

Warren also argues that the trial court abused its discretion by imposing consecutive sentencing. During the sentencing hearing, Warren asked the trial court to consider concurrent sentences because his two crimes stemmed from one incident. When sentencing Warren to consecutive sentences, the trial court noted that Warren's crimes were separate offenses with separate victims. Although the trial court relied in part on the victim impact aggravator when imposing consecutive sentences, it also relied upon Warren's criminal history and the multiple victims, both of which are valid aggravators. *See French v. State*, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005) (holding that the existence of multiple victims is a valid aggravator), *trans. denied*. Thus, we cannot say that the trial court abused its discretion by ordering Warren to serve consecutive sentences.

We affirm.

VAIDIK J., concurs.

RILEY, J., concurs in result.